

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF MCINTOSH

SOUTH CENTRAL JUDICIAL DISTRICT

Gene Rudolf,

Civil No. _____

Plaintiff,

vs.

SUMMONS


Deere & Company,

Defendant.

THE STATE OF NORTH DAKOTA TO THE ABOVE NAMED DEFENDANT:

YOU ARE HEREBY SUMMONED and required to appear and defend against the Complaint in this action, which is herewith served upon you by serving upon the undersigned an Answer or other proper response within twenty (20) days after the service of this Summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the Complaint.

Dated this 22 day of March, 2010.



Marnell W. Ringsak, #03609
Attorney for Plaintiff
411 North 4th Street, P. O. Box 2155
Bismarck, ND 58502-2155
(701) 255-1344

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF MCINTOSH

SOUTH CENTRAL JUDICIAL DISTRICT

Gene Rudolf,

Civil No. _____

Plaintiff,

vs.

COMPLAINT

Deere & Company,

Defendant.

Plaintiff, for its claim against defendant, alleges as follows:

COUNT I

NEGLIGENT DESIGN OR MANUFACTURING

I.

That defendant, Deere & Company, a corporation licensed to do business in North Dakota, recklessly, carelessly, or negligently designed, manufactured, produced, and supplied a 2008 - 9870 STS John Deere Combine, VIN H09870S725474 and a 2008 - 9870 STS John Deere Combine, VIN H09870S725462 to the plaintiff.

II.

Said combines were intended for and reached the plaintiff without substantial change in the condition in which they were manufactured and sold.

III.

That the defendant recklessly, carelessly, or negligently designed, manufactured, produced, or supplied the aforementioned combines, causing them to spontaneously ignite and burn at or near rural Wishek, North Dakota on November 19 and 20, 2009, damaging said combines in the amount of \$16,398.01 and \$273,500.00, along with personal property of \$9,258.00, header of \$10,948.00 and rental of \$8,330.00, totaling \$318,434.01.

COUNT II

NEGLIGENT FAILURE TO WARN

IV.

Plaintiff realleges each and every preceding paragraphs of the Complaint as though fully set forth herein.

V.

That the defendant recklessly, carelessly, or negligently failed to inspect the combines to assure the plaintiff that they were safe and free from defects and/or failed to provide adequate warning with respect to their design, manufacture, operation, and maintenance.

COUNT III

CONTRACT/BREACH OF WARRANTIES

VI.

Plaintiff realleges each and every preceding paragraphs of the Complaint as though fully set forth herein.

VII.

That defendant, a foreign corporation licensed to do business in the State of North Dakota, produced and/or manufactured faulty 2008 - 9870 STS John Deere Combine, VIN H09870S725474 and a 2008 - 9870 STS John Deere Combine, VIN H09870S725462, and expressly and/or impliedly warranted said combines to be made of good material and workmanship and to be capable of performing and functioning their designed purpose without igniting into fire.

VIII.

That on or about November 19 and 20, 2009, as a result of defendant's breach of warranty, plaintiff's 2008 - 9870 STS John Deere Combine, VIN H09870S725474 and a 2008 - 9870 STS John Deere Combine, VIN H09870S725462, spontaneously ignited and burned resulting in a loss of \$318,434.01.

IX.

That defendant defectively produced said 2008 - 9870 STS John Deere Combine, VIN H09870S725474 and a 2008 - 9870 STS John Deere Combine, VIN H09870S725462, and that such defect was in breach of its warranties express and/or implied, including warranty of merchantability and/or warranty of fitness for a particular purpose and breach of merchantability thereby resulting in a loss to plaintiff in the amount of \$318,434.01.

COUNT IV

STRICT LIABILITY FOR MANUFACTURING

X.

Plaintiff realleges each and every preceding paragraph of the Complaint as though fully set forth herein.

XI.

That the defendant designed, produced, assembled, manufactured, and sold said combines being a 2008 - 9870 STS John Deere Combine, VIN H09870S725474 and a 2008 - 9870 STS John Deere Combine, VIN H09870S725462, when they knew that they would be used by the ultimate user without inspection for defects, and that they further placed said combines on the market representing that they were safe for use; that to the contrary, said combines were in defective conditions unreasonably dangerous for their intended use by reason of the defective design and manufacture thereof and by said defendant's failure to adequately test, inspect or warn of such dangers; and as a direct result of said defective design and manufacture and said defendant's failure to test, inspect, or warn, the plaintiff sustained damages for which the defendant is strictly liable in tort.

XII.

That as a result of the defects herein alleged, plaintiff was caused to suffer and sustain damages as previously stated.

COUNT V

STRICT LIABILITY FOR FAILURE TO WARN

XIII.

Plaintiff realleges each and every preceding paragraph of the Complaint as though fully set forth herein.

XIV.

That the defendant knew or should have known of the defective design and/or potential danger of fire, and either negligently failed to warn plaintiff before the sale of such danger, or in the alternative, became aware of the danger after the sale and negligently failed to warn plaintiff of such danger at that time or in the alternative, the defendant is strictly liable at law for its failure to warn the plaintiff of the aforementioned danger.

XV.

That as a direct and proximate result of defendant's failure to warn the plaintiff of the danger, plaintiff has suffered damages in the amount of \$318,434.01.

WHEREFORE, plaintiff demands judgment against defendant, for the sum of \$318,434.01 plus prejudgment interest at the rate of 6% per annum from the date of the fires on November 19 and 20, 2009, together with its costs and disbursements, reasonable attorney's fees herein after allowing all credits and setoffs, and for such other and further relief as the Court deems fair and equitable.

THE PLAINTIFF DOES DEMAND A JURY OF 12 PERSONS OR THE LARGEST JURY ALLOWED BY LAW.

Dated this 27 day of March, 2010.



Marnell W. Ringsak, #03609
Attorney for Plaintiff
411 North 4th Street, P. O. Box 2155
Bismarck, ND 58502-2155
(701) 255-1344



**Service of Process
Transmittal**

03/24/2010

CT Log Number 516355543



TO: Jennifer L Ludwig
Deere & Company
One John Deere Place
Moline, IL 61265

RE: Process Served in North Dakota

FOR: Deere & Company (Domestic State: DE)

ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:

TITLE OF ACTION: Gene Rudolf, Pltff. vs. Deere & Company, Dft.
DOCUMENT(S) SERVED: Summons, Complaint
COURT/AGENCY: South Central Judicial District Court, County of McIntosh, ND
Case # None Specified
NATURE OF ACTION: Product Liability Litigation - Breach of Warranty - Pltff. alleges Dft. negligence in design, manufacture and production of combines caused them to spontaneously ignite and burn on November 19, 2009 and November 20, 2009
ON WHOM PROCESS WAS SERVED: C T Corporation System, Bismarck, ND
DATE AND HOUR OF SERVICE: By Certified Mail on 03/24/2010 postmarked on 03/23/2010
APPEARANCE OR ANSWER DUE: Within 20 days, exclusive of day of service
ATTORNEY(S) / SENDER(S): Marnell W. Ringsak
Severin, Ringsak & Morrow
411 N 4th St
P.O. Box 2155
Bismarck, ND 58502-2155
701-2551344
ACTION ITEMS: CT has retained the current log, Retain Date: 03/24/2010, Expected Purge Date: 03/29/2010
Image SOP
Email Notification, Jennifer L Ludwig ludwigjenniferl@johndeere.com
SIGNED: C T Corporation System
ADDRESS: 314 East Thayer Avenue
Bismarck, ND 58501
TELEPHONE: 701-223-2890

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SEVERIN, RINGSAK & MORROW
ATTORNEYS AT LAW
PROFESSIONAL CENTER
411 NORTH 4TH STREET
BISMARCK, NORTH DAKOTA 58501

ADDRESS SERVICE REQUESTED

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REG. AGENT FOR DEERE & COMPANY
P. O. BOX 400
BISMARCK, ND 58502-0400

NOTIFIED
1ST NOTICE MAR 24 2010
2ND NOTICE
BISMARCK, ND

58502-0400

